

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION**

**MEMORANDUM OPINION AND ORDER GRANTING DEFENDANTS' MOTIONS**

Before the Court are the two Defendants' opposed motions, filed November 30, 2012 and January 10, 2013, to stay and abate this case pending the joinder of additional party Christen Garcia, as next friend of BFGL, a minor child who is an additional child of Israel Leija, Jr., deceased. These two motions (docket numbers 42 and 46, for which leave to file is also hereby granted) are both granted in part as follows.

Plaintiffs bring two claims: a federal civil rights claim pursuant to 42 U.S.C. § 1983, and a state-law wrongful death claim pursuant to Chapter 101 of the Texas Civil Practices and Remedies Code (the Texas Tort Claims Act). Under the Texas Tort Claims Act, the Defendants are entitled to have all statutory heirs to the estate of Israel Leija, Jr. identified and joined in this lawsuit. *See Avila vs. St. Luke's Lutheran Hospital*, 948 S.W.2d 841 (Tex. App. – San Antonio 1997, writ denied). There is clear evidence in the record in this case – sworn testimony given in the depositions of Israel Leija, Sr., father of the deceased, and Christen Garcia, the natural mother of BFGL – that BFGL is the minor child of Israel Leija, Jr., deceased. Christen Garcia indicated in her deposition

that she has no opposition to her minor child being joined in this suit as an additional party plaintiff, and that efforts are being made to obtain legal representation for her in this suit.

This case is therefore abated and stayed for thirty (30) days to allow Christen Garcia, the natural mother of BFGL, to obtain legal representation and join this lawsuit as an additional party plaintiff. If joinder is accomplished within that time, this case may proceed to resolution on both claims asserted herein.

If joinder is not accomplished within that time, the Court will then consider severing the state-law based wrongful-death claim from this lawsuit and declining to exercise its supplemental jurisdiction over that claim, proceeding solely upon the federal civil rights claim.

It is SO ORDERED.

Signed this the 11 day of March, 2013.

  
**MARY LOU ROBINSON**  
UNITED STATES DISTRICT JUDGE